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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,321	02/07/2006	Ralf Grobleben	2003P01225WOUS	6737

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INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

WILKENS, JANET MARIE

ART UNIT	PAPER NUMBER
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3637

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11/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/567,321	Applicant(s) GROBLEBEN ET AL.	
	Examiner Janet M. Wilkens	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 15-19, 21-27 and 29 is/are rejected.
- 7) ☒ Claim(s) 20 and 28 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/7/2006</u> | 6) <input type="checkbox"/> Other: ____ |

Specification

The disclosure is objected to because of the following informalities: there are no headings in the specification, i.e. Brief Description of the Drawings, etc. and it is improper to refer to a claim in the specification (see page 1, wherein claim 1, which has been canceled, is referred to) . Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For claim 17, "the holder" lacks antecedent basis. Also, it is unclear whether the rails are in the retaining means or the shelf base.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-18, 22, 24, 25, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Whalen (2,103,885). Whalen teaches a shelf base (Fig. 7) comprising: a plate (90), lower open ended retaining rails extending along a lower side of the plate

and upper retaining rails (see Fig. 8). The rails are attached together via a rail (95) and are retained on the plate via L-shaped brackets (see Fig. 7). The rails accommodate shells/holders/supports (101,103) capable of holding various items including cans, eggs, etc. Please note that limitations found in intended use/"for" statements have been given no weight in the claims.

Claims 15-18, 22, 24, 25, 27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Whalen (2,103,885). Whalen teaches a shelf base (Fig. 3) comprising: a plate (26), lower open ended retaining rails (29-32) extending along a lower side of the plate and upper retaining rails (17-21). The rails are attached together by the plate, the lower rails being displaceably connected (see dashed lines in Fig. 2), and members (39-42) and are retained on the plate via members (53,55). The rails accommodate shells/holders/supports (74,83).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whalen in view of Avery (2,018,002). As stated above, Whalen teaches the limitations of claim 15, including a shelf base having rails that accommodate shells/holders/supports (74, 83). For claim 26, Whalen fails to teach that the support includes a base plate with ribs

having indentations. Avery teaches a support (32) that includes a base plate with ribs having indentations (See Fig. 3). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the base of Whalen by using an alternate support therein, i.e using the support of Avery instead of the support presently used, depending on the type of items to be stored in the base. The support of Avery accommodating bottles in a secure manner.

Claims 15-19 22-25, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hearst (2,450,337) in view of Frank (5,348,207). Hearst teaches a shelf base (Fig. 2) comprising: a plate (11) and tiltable upper and lower drawer units attached together and to the plate via a guide profile/clip (15) and housing walls. For claim 15, Hearst fails to teach upper and lower rails. Frank teaches a tiltable drawer (17) using rear open ended rails (19, 21). The front of the rails includes a flange/stop (see fig. 1b). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the base of Hearst by adding rails between the drawers and housing walls, such as is taught by Frank, to provide a means between the housing and drawers that would allow tilting of the drawers while not allowing easy removal of the drawers from the housing. The rails of the upper drawer being upper rails and the rails of the lower drawer being lower rails; these rails being removed/displacable on the drawers. The drawers constituting shells/holders/supports capable of holding various items including cans, eggs, etc.

Allowable Subject Matter

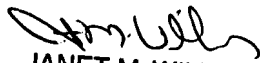
Claims 20 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Wilkens
October 25, 2007


JANET M. WILKENS
PRIMARY EXAMINER
12/13/07